

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

LAKESHA NORINGTON,	)	
	)	
vs.	)	
	)	
MARK LEVENHAGEN,	)	1:10-cv-477-SEB-MJD
	)	
Respondent.	)	

**Entry and Notice**

**I.**

“The dismissal of a suit as untimely is a dismissal on the merits, and so should ordinarily be made with prejudice, barring relitigation.” *Pavlovsky v. VanNatta*, 431 F.3d 1063, 1064 ((7th Cir. 2005); see also *Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003) ( per curiam ) (“We hold today that a prior untimely [28 U.S.C. § 2254] petition does count [as an adjudication on the merits] because a statute of limitations bar is not a curable technical or procedural deficiency. . . .”).

**II.**

This action for habeas corpus relief was filed after the applicable statute of limitations had expired. The court concluded on this basis that the action had to be dismissed. The first sentence of the first paragraph of page 1 of the Entry issued on April 29, 2011, mistakenly recites that the action must be dismissed without prejudice. This was a scrivener’s error and must be corrected pursuant to Rule 60(a) of the *Federal Rules of Civil Procedure*.<sup>1</sup>

The first sentence of the Entry docketed on April 19, 2011, is replaced with the

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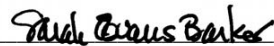
<sup>1</sup>Under Rule 60(a), a court “may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed.R.Civ.P. 60(a). “It is axiomatic that courts have the power and the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake.” *Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir. 1992). The Judgment accompanying the Entry of April 19, 2011, correctly dismisses the action with prejudice and hence requires no alteration.

following:

For the reasons explained in this Entry, the petition of Lakesha Norington for a writ of habeas corpus must be denied and the action dismissed with prejudice.

**IT IS SO ORDERED.**

Date: 05/03/2011

A handwritten signature in black ink, appearing to read "Sarah Evans Barker", is written over a horizontal line.

SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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